

1 David H. Waters, CASB 078512

2 dwaters@burnhambrown.com

3 Jack W. Schwartz, Jr., CASB 124506

4 jschwartz@burnhambrown.com

5 BURNHAM BROWN

6 A Professional Law Corporation

7 P.O. Box 119

8 Oakland, California 94604

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10 1901 Harrison Street, 14th Floor

11 Oakland, California 94612

12 Telephone: (510) 444-6800

13 Facsimile: (510) 835-6666

14 Attorneys for Federal Deposit Insurance Corporation as Receiver  
for Defendant IndyMac Federal Bank, FSB

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

17 EDEN GARDEN LLC, a California limited  
18 liability company; ALI K. AMIDY, an  
19 individual; GUITI NAHAVANDI AMIDY, an  
20 individual; CENTRA NET INVESTMENT  
21 LLC, a California limited liability company,

22 Plaintiffs,

23 v.

24 INDYMAC VENTURE, LLC, a Limited  
25 Liability Company; FEDERAL DEPOSIT  
26 INSURANCE CORPORATION, as  
27 Conservator of IndyMac Federal Bank, FSB,  
28 and DOES 1-10,

Defendants.

INDYMAC VENTURE, LLC, a limited  
liability company.

Counterclaimant

v.

ALI K. AMIDY, an individual; GUITI  
NAHAVANDI AMIDY, an individual;  
CENTRA NET INVESTMENT LLC, a  
California limited liability company,

Counterdefendants

No. CV-11-02356-JF

*This matter assigned to Honorable Jeremy  
Fogel, Courtroom No. 3, for All Purposes*

**NOTICE OF CONTINUED HEARING  
RE MOTION OF FEDERAL DEPOSIT  
INSURANCE CORPORATION AS  
RECEIVER OF DEFENDANT  
INDYMAC FEDERAL BANK, FSB TO  
DISMISS CLAIMS; DECLARATION  
OF JACK W. SCHWARTZ JR.**

**[F.R.C.P. Rules 12(b)(6) and 12(b)(1)]**

Date: October 21, 2011

Time: 9:00 a.m.

Dept: Courtroom No. 3, Fifth Floor

Judge: Honorable Jeremy Fogel

1 TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT, per the Clerk's Notice on July 29, 2011 [Docket  
3 Document #29], the hearing on the Motion of the Federal Deposit Insurance Corporation As  
4 Receiver of Defendant IndyMac Federal Bank, FSB to Dismiss Claims, previously set for  
5 hearing on August 5, 2011, has been continued to October 21, 2011 at 9:00 a.m. in Courtroom 3  
6 on the 5th Floor of the United States District Court, 280 South First Street, San Jose, California.  
7 A true and correct copy of the Clerk's Notice is attached hereto as Exhibit "A".

8 The following papers in support of the subject Motion To Dismiss have  
9 previously been filed with this Court and served on the Plaintiffs' then attorney of record<sup>1</sup>:

- 10 1. Notice Of Motion And Motion Of Federal Deposit Insurance  
11 Corporation As Receiver Of Defendant IndyMac Federal Bank, FSB  
12 To Dismiss Claims [Served on June 10, 2011 – Court Docket  
Document #15.];
- 13 2. Memorandum of Points And Authorities In Support of Motion Of  
14 Federal Deposit Insurance Corporation As Receiver Of Defendant  
15 IndyMac Federal Bank, FSB To Dismiss Claims [Served June 10,  
2011 – Court Docket Document #14.];
- 16 3. Request For Judicial Notice In Support Of Motion Of Federal Deposit  
17 Insurance Corporation As Receiver Of Defendant IndyMac Federal  
18 Bank, FSB To Dismiss Claims [Served June 10, 2011 – Court Docket  
Document #s 14-1 and 14-2];
- 19 4. Declaration of Jack W. Schwartz Jr. In Support Of Motion Of Federal  
20 Deposit Insurance Corporation As Receiver Of Defendant IndyMac  
21 Federal Bank, FSB To Dismiss Claims [Served June 10, 2011 – Court  
Docket Document #17];
- 22 5. Declaration of James P. Gazdecki In Support Of Motion Of Federal  
23 Deposit Insurance Corporation As Receiver Of Defendant IndyMac  
24 Federal Bank, FSB To Dismiss Claims [Served June 10, 2011 – Court  
Docket Document #14-3];
- 25 6. Certificate of Service Of Notice Of Motion And Motion Of Federal  
26 Deposit Insurance Corporation As Receiver Of Defendant IndyMac  
27 Federal Bank, FSB To Dismiss Claims [Served June 10, 2011 – Court  
Docket Document #14-5.];

28 <sup>1</sup> Other parties are registered with PACER and served electronically by Court's system.

1 7. [Proposed] Order On Motion Of Federal Deposit Insurance  
2 Corporation As Receiver Of Defendant IndyMac Federal Bank, FSB  
3 To Dismiss Claims [Served June 10, 2011]; and

4 8. Statement Re Failure Of Plaintiffs To Serve Opposition To Federal  
5 Deposit Insurance Corporation As Receiver of IndyMac Federal Bank,  
6 FSB's Motion To Dismiss Claims [Served July 5, 2011 – Court  
7 Docket Document #23].

8 PLEASE TAKE FURTHER NOTICE of United States District Court, Northern District  
9 of California Local Civil Rules 5-5 and 7-3 with respect to the timing of the filing and service on  
10 the parties of any papers opposing the subject Motion To Dismiss.

11 Dated: September 7, 2011

BURNHAM BROWN

By:

12 DAVID H. WATERS  
13 JACK W. SCHWARTZ, JR.  
14 Attorneys for Federal Deposit  
15 Insurance Corporation as Receiver  
16 for Defendant IndyMac Federal  
17 Bank, FSB

18 **DECLARATION OF JACK W. SCHWARTZ JR.**

19 I, Jack W. Schwartz Jr., declare:

20 1. I am a Senior Counsel with Burnham Brown, counsel of record for the Federal  
21 Deposit Insurance Corporation as Receiver of Defendant IndyMac Federal Bank, FSB (“*FDIC*  
22 – *Receiver*”). I have personal knowledge of the facts set forth herein and if called as a witness, I  
23 could and would competently testify as to the matters set forth below.

24 2. On August 1, 2011, I had a telephone conference with Ali Amidy, one of the  
25 Plaintiffs in this action. The telephone conference was a result of a letter Mr. Amidy had served  
26 in which he indicated, in part, that the Plaintiffs’ counsel of record was not able to represent the  
27 Plaintiffs in this action. In response to my inquiry, Mr. Amidy informed me that he received,  
28 from the Plaintiffs’ counsel, the papers filed with this Court in support of the subject FDIC –  
Receiver’s Motion To Dismiss. Mr. Amidy was not aware that the August 5, 2011 hearing date

1 had been continued so I forwarded a copy of the notice continuing the motion hearings and case  
2 management conference dates to him via email attachment.

3 3. Notwithstanding the fact that Mr. Amidy has represented that he is in possession  
4 of the motion papers previously filed (and served on his then counsel of record) in support of  
5 the FDIC – Receiver’s Motion To Dismiss, and the fact that Mr. Amidy does not appear to be a  
6 registered user of the PACER system, on September 7, 2011, I forwarded a copy of the motion  
7 papers in support of the FDIC – Receiver’s Motion To Dismiss to Mr. Amidy via email  
8 attachment.

9 Executed this 7<sup>th</sup> day of September 2011 at Oakland California

10 I declare under penalty of perjury under the laws of the United States that the foregoing  
11 is true and correct.

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13 Jack W. Schwartz Jr.  
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**EXHIBIT "A"**

\*\*E-Filed 7/29/11\*\*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

EDEN GARDEN, LLC, et al.,

Plaintiffs,

v.

INDYMAC VENTURE, LLC, et al.,

Defendants.

Case Number 5:11-cv-02356-JF (HRL)

CLERK'S NOTICE

To all Parties and Attorneys of Record:

The Motion Hearing set for August 5, 2011 and the Case Management Conference set for September 2, 2011 are CONTINUED to October 21, 2011, at 9:00 a.m. Please report at that time to Courtroom 3 on the 5th Floor of the U.S. District Court, 280 South First Street, San Jose, California.

DATED: 7/29/11

For the Court  
Richard W. Weiking, Clerk

By: \_\_\_\_\_ /s/  
Diana Munz  
Courtroom Deputy Clerk

Cal. G.  
1091930

*Eden Garden LLC v. IndyMac Venture, LLC, et al.*  
United States District Court – Northern District of California, San Jose Division  
Action No: CV-11-02356-JF

CERTIFICATE OF SERVICE

I, Gail D. Richardson, certify and declare as follows:

I am over the age of 18 years and not a party to this action.

My business address is Burnham Brown, 1901 Harrison Street, Suite 1400, Oakland, California 94612, which is located in the city, county and state where the mailing described below took place.

On September 7, 2011, I served the following document(s), a copy of which is attached to this Certificate addressed as set forth in the following manner:

**NOTICE OF CONTINUED HEARING RE MOTION OF FEDERAL DEPOSIT  
INSURANCE CORPORATION AS RECEIVER OF DEFENDANT INDYMAC  
FEDERAL BANK, FSB TO DISMISS CLAIMS; DECLARATION OF JACK W.  
SCHWARTZ**


BY E-FILING (USDC NORTHERN DISTRICT): I caused such document to be sent electronically to the court; pursuant to General Order No. 08-02, electronic filing constitutes service upon the parties who have consented to electronic service.

By placing the document(s) listed above in a sealed envelope with postage thereon, in the United States mail at Oakland, California, addressed as set forth below to the following person(s) at the following address on the date set forth below:

Ali Amidy  
*Plaintiff In Pro Per*  
P.O. Box 369  
Los Gatos, CA 95031  
Cell: (408) 497-4137  
Fax: (408) 399-4477

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 7, 2011.

  
Gail D. Richardson